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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

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JUN 23 1997

Federal Communications Commission
Office of Secretary

In the Matter of

Broadband PCS C and F

Block Installment

Payment Issues

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WT Docket 97-82

DA 97-679

COMMENTS OF

URBAN COMMUNICATORS PCS LIMITED PARTNERSHIP

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June 23, 1997

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SUMMARY

Urban Communicators PCS Limited Partnership, ("Urban Comm"), submits its Comments in response to the Commission's request for proposals addressing the C and F Block Broadband PCS financing terms.¹

For new companies, the current investment climate is such that many minority- and women-owned small businesses which hold licenses in the C and F Block will not be able to secure adequate capital to both meet their build-out requirements and service their license debt under the Commission's present payment terms. Therefore, restructuring the C and F Block installment payments is necessary in order to both preserve PCS auction revenue to the U.S. Treasury and also to meet the Commission's mandate to insure rapid build-out of PCS services to the public. Failure to restructure the debt will likely result in the default of many C Block licensees; multiple defaults, in turn, will result in a loss of revenue to the U.S. Treasury, and further delays in the roll out of services, and delays in bringing new competition into the wireless market.

Multiple defaults followed by a reauction of spectrum will most certainly result in substantially less revenue to the Treasury. The market has shown that PCS spectrum is valued at prices that are considerably lower than the C Block per POP bid values. Therefore, bid prices in a reauction would be significantly less than the current bid amounts, resulting in a substantial reduction in the face amount of the debt due to the Treasury.

Multiple defaults would also displace many minority- and women-owned businesses, contrary to the Commission's public interest goals of facilitating entry into the PCS service by

¹ See Public Notice, DA 97-679, June 2, 1997.

“designated entities.” These goals are embodied in the Commission’s decision to implement installment payments in the auction process, and are also expressed in various sections of §309(j) and in the legislative history of § 257(a) of the Telecommunications Act of 1996 (the “Act”).

The primary and shared goal of the Commission, C and F Block licensees, and the consuming public is rapid deployment of PCS services in which the quality and integrity of service is not sacrificed and in which new competition is introduced into the wireless industry. The Commission must pursue a regulatory course that will achieve this common goal given present market realities, given the objectives of Congress for designated entities, given the likelihood, if no action is taken, of multiple defaults among C and F Block licensees, and given the delays to roll-out that a re-auction of PCS spectrum would cause.

Urban Comm proposes that the Commission make the following changes to the existing PCS installment payment plan:

- Defer all payments without any accrual of interest for the first five years of the license term;
- Require interest-only payments in year six;
- Require payments of ten percent of the principal plus interest in each of years seven through nine, and
- Require full payment of outstanding principal and interest at maturity.

This proposal is illustrated by a chart which is attached as Appendix A.

Urban Comm respectfully submits this proposal not only as a viable solution to the financing problems faced by designated entities who obtained licenses in the C and F Block auctions, but also

as one that meets the Commission's public interest policies and preserves the funds promised to the U.S. Treasury.

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COMMENTS OF

URBAN COMMUNICATORS PCS LIMITED PARTNERSHIP

Urban Communicators PCS Limited Partnership, (“Urban Comm”), is an African American owned, start-up, small business. Urban Comm’s wholly owned subsidiary, Urban Comm-North Carolina, Inc. has acquired broadband PCS licenses for 10 Basic Trading Areas (“BTAs”) in eastern North Carolina in the C Block and for 13 BTAs in Virginia, North Carolina, and South Carolina in the F Block. Urban Comm submits these Comments in response to the Commission’s request for proposals addressing the C and F Block PCS financing terms. For the reasons set forth below, Urban Comm respectfully requests that the Commission make the following changes to the existing terms of the PCS C Block installment payment plan:

- Defer all payments without any accrual of interest for the first five years of the license term,
- Require interest-only payments in year six,
- Require payments of ten percent of the principal plus interest in each of years seven through nine, and

- Require full payment of outstanding principal and interest at maturity.

This proposal is illustrated by a chart which is attached as Appendix A.

I. THE POLICY CONSIDERATIONS THAT LED TO THE DEVELOPMENT OF INSTALLMENT PAYMENTS FOR DESIGNATED ENTITIES NECESSITATE RESTRUCTURING OF THE INSTALLMENT DEBT

In implementing Section 309(j) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“the Act”), which establishes the use of competitive bidding in the license process, the Commission sought to select appropriate rules and procedures that would best serve its basic policy goals and achieve the congressional objectives that were clearly established by the Act.² Although the Commission had no actual experience with auctions at the time the *Second R & O* was drafted, its purpose was to develop competitive bidding rules which, in combination with spectrum allocation rules, would promote the public policy objectives set forth in § 309(j) of the Act.³

Section 309(j)(3)(B) of the Act provides for the promotion of opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, women and minorities (collectively, “designated entities”). Section 309(j)(4)(A) directs the Commission to consider alternative payment schedules and methods of calculation, including guaranteed installment payments. Section 309(j)(4)(D) provides that to ensure the participation of designated entities in spectrum-based services, the Commission is to

² In re *Implementation of Section 309(j) of the Communications Act--Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348, 2350, ¶¶ 8-9, (1994) (hereinafter “*Second R & O*”).

³ *Id.* at ¶ 3.

consider the use of tax certificates, bidding preferences, and other procedures. Upon careful consideration of the mandates of §§ 309(j)(3)(B), (4)(A) and (4)(D), the Commission determined that installment payments would best serve Congress's policy objective of ensuring participation in the competitive bidding process and in the provision of spectrum-based services by designated entities.⁴ Backed by strong expressions of Congressional intent in the language of the Act, explicitly recognized in the *Second R & O*,⁵ the Commission instituted installment payments as a means of fostering full participation by designated entities as providers of spectrum-based services, specifically personal communications services ("PCS").

The *Second R & O* cites comments which stated that installment payments would minimize the effects of lack of access to capital by women- and minority-owned small businesses.⁶ The Commission also noted that allowing installment payments is equivalent to the government's extending credit to the successful bidder and that "[t]his would reduce the amount of private financing needed by a prospective licensee."⁷ Urban Comm applauds the Commission's implementation of this minimally necessary condition to market entry by designated entities. However, the most crucial factors in obtaining financing lie not in the mere existence of installment payments, but in the structure and terms of those installments. Unfortunately, the financial markets have revealed serious flaws in the current terms by which the installment payments are to be made.

⁴ *Id.* at ¶¶ 227, 229.

⁵ *Id.*

⁶ *Id.* at ¶ 232.

⁷ *Id.* at ¶ 231.

Traditionally, start-up telecommunications providers have been funded by debt instruments with the following general characteristics: 1) long payback terms reflecting the time necessary for the business to reach maturity; 2) no cash or interest payments in the initial build out period, with interest beginning to accrue only after the business begins to generate a positive cash flow, and 3) the bulk of the principal and accrued interest paid at maturity.

Terms such as these are more attractive to the financial community for several reasons. First, the duration of the loan repayment period (*i.e.*, the time to maturity) matches the amount of time required to fully develop the business. Second, the length of the term allows adequate time following the initial build-out period for interest accrual to generate adequate rates of return. Third, payments are not required until such time as the business is capable of *making* payments through positive cash flow. Finally, such debt structures permit a business to use all available cash flow to build its subscriber base once positive cash flow is achieved.

In view of the financing problems facing C and F Block licensees, restructuring the current installment payments is essential in order to fulfill the congressional objectives of ensuring participation of designated entities in the provision of spectrum-based services and corresponding Commission policies.

II. THE CURRENT INVESTMENT CLIMATE POSES SUBSTANTIAL AND MATERIAL FINANCING OBSTACLES FOR DESIGNATED ENTITIES

When the C Block auction ended in May, 1996, the outlook for the new PCS industry was good. Well-capitalized A and B Block winners, who had obtained their licenses at an average per population price of \$15.54, were already constructing PCS facilities, and some were trading on the open market. The public markets valued these PCS companies at \$40.33 per population, slightly

more than the average per population price of \$39.17 bid in the C Block auction, and substantially higher than the average per pop price of \$22.00 bid by Urban Comm for its C Block licenses. By the end of 1996, however, PCS values had plummeted to prices below \$20 per population, and the substantially lower prices in the D, E, and F Block auction (\$9.97 per population, or \$3.32 when adjusted to reflect equivalent units of spectrum sold in both auctions) reflected the market sentiment.

This situation left many PCS licensees in a struggle to secure adequate capital to meet their build-out requirements as well as their repayment obligations. Capital for build-out is now difficult to obtain because financiers have little incentive to invest in companies whose only asset -- the FCC license -- is overvalued, is tied to uncertain or unfavorable terms, and which cannot, at the time the funds are sought, generate income. Additionally, C Block entrepreneurs face stiff competition in every market from entrenched and well-financed cellular carriers who paid *nothing* for their cellular licenses and A and B Block PCS companies, most of which are also cellular providers.

The impact of skepticism in the financial community is felt most strongly by those start-up PCS companies that met the Commission's financial qualifications requirements through private loans or similar financial vehicles and whose repayment obligations now include not only those obligations imposed by the Commission, but also those imposed by private lenders. Many of these start-ups are the very companies whose participation in the PCS industry the Congress and the Commission avidly sought: small, minority- and women-owned businesses which, despite a long history of difficulties in gaining access to the capital markets, stepped up to the plate and met the financial qualification requirements in an effort to foster competition, diversity and job creation in a new technological arena.

The difficulties confronting C Block broadband PCS licensees at present are not the result of reckless bidding or poor business decisions. The best of financial planners could not have factored into their planning the FCC's decision to let A and B Block bidders have the first auction, (giving them a clear advantage over the start-up companies), the three consecutive court-ordered stays that delayed the C Block auction for a year after the A and B Block auction, nor the downturn in the market for wireless stocks or its effect on PCS financing. Both the Commission and the C Block participants share in the burdens imposed by these unforeseeable events, and the public interest would not be served if the Commission were simply to allow large numbers of licensees to default, and then to impose the penalties set forth in the *Second Report and Order*, as the Cook Inlet *Petition for Rulemaking* suggests.⁸ Those default provisions and penalties were designed to apply to a stable industry, where the vast majority of licensees would be fully capable of sustaining facilities-based operations and of making all required payments on time, and where the likelihood of default would be limited to only a handful of ill-qualified or otherwise unscrupulous licensees. Those rules were not intended to apply, and should not apply, to a major industry downturn affecting virtually all C and F Block licensees.

III. RESTRUCTURING C AND F BLOCK DEBT WILL FURTHER THE COMMISSION'S PUBLIC INTEREST GOAL OF FOSTERING COMPETITION AND PARTICIPATION IN THE COMMUNICATIONS INDUSTRY BY DESIGNATED ENTITIES

A. Section 257 of the Telecommunications Act of 1996 and the Market Entry Barriers Report Announce and Reaffirm the

⁸ *Petition for Rulemaking Regarding the Administration and Disposition of Competitive Bidding Installment Payment Obligations*, submitted by Cook Inlet Region, Inc., May 7, 1997 (RM 9093), at 3, 6, 8-9, 10, 11.

Commission's Statutory Duty to Foster Ownership by Designated Entities

Section 257(a) of the Act mandates the elimination of market entry barriers for entrepreneurs and other small businesses in the provision of telecommunications services. However, not all impediments to small business participation in the telecommunications industry qualify as “market entry barriers.”⁹ The term as used in § 257(a) “ . . . is primarily intended to encompass *those impediments to entry within the Commission's jurisdiction that justify regulatory intervention* because they so significantly distort the operation of the market and harm consumer welfare.”¹⁰ Removing such impediments will facilitate the entry and expansion of small businesses into telecommunications markets as required by § 257(a).¹¹

The Commission is directed by both § 257(a) and the related § 309(j)(4)(D) to remove regulatory obstacles as well as to advance procedures designed to ensure participation in spectrum-based services for small businesses. Section 257(a) has been interpreted to apply to minority- and women-owned small businesses because of congressional concerns about the under-representation of minorities and women as owners in the telecommunications marketplace. Including minorities and women within the class of small businesses is squarely supported by § 257(a)'s legislative history.¹² Section 309(j) refers explicitly to small businesses, women, minorities and rural telephone companies in several of its provisions.

⁹ In re *Section 257 Proceeding to Identify and Eliminate Market Entry barriers for Small Businesses, Report*, GN Docket No. 96-113, FCC 97-164, ¶13.

¹⁰ *Id.* at ¶ 16 [emphasis added].

¹¹ *Id.*

¹² *Id.* at ¶ 210 & fn #501.

To the extent that C and F Block debt obligations under the current installment payment plan negatively affect the ability of businesses to procure necessary capital and roll-out their PCS services, those debt obligations are a market entry barrier. Although the state of the financial markets is not within the control of the Commission, policy decisions made by the Commission clearly influence those markets. The policy decision that instituted installment payments was predicated in part on the notion that the government should extend credit to successful bidders. The hope was that such government intervention would reduce the need for private financing.¹³

There is no doubt that restructuring the PCS installment payments is fully within the Commission's jurisdiction to the same degree that the creation of the present installment plan was within the Commission's jurisdiction. Moreover, the consuming public is benefitted by enabling current C and F Block licensees to adequately finance and roll out their PCS services in a timely and quality-driven fashion. Conversely, the default of many C and F Block licensees that would likely result from failure to restructure installment payment obligations will: (1) cause a delay of C and F Block PCS roll-out by at least two years, (2) distort the market, and (3) deprive consumers of the benefits of competition. The Commission is in a position to remove this obstacle, and Commission intervention is justified by the significant number of C and F Block licensees facing serious financing difficulties. Therefore, the Commission should recognize that the current installment payment plan is a market entry barrier that can be eliminated by restructuring debt obligations of the C and F Block licensees in a manner that not only reduces their present financial burden, but also

¹³ *Second R & O* at ¶ 231.

promotes their chances of attracting private investment. To this end, Urban Comm recommends the adoption of its proposals.

B. Restructuring C and F Block Installment Payment Obligations Will Not Result in a Reduction in Revenue to the U.S. Treasury

Under the current payment plan, the U.S. Treasury expects to receive in excess of \$10 billion from the C Block auction. That amount reflects bid amounts of \$10.2 billion, which are treated as principal under the terms of the Commission's form notes and security agreements. In addition to this face amount, interest payments are to be made quarterly over the first six years of the license term. Urban Comm's proposal includes the postponement of all payments during the first five years of the license term. Deferral of the currently-required interest payments does not mean a loss in the face amount of the debt. Deferral would merely reflect the traditional debt structure for new communications services, which takes into account the time required to transform an intangible asset (in this case, a license) into a viable facilities-based business.

Deferral of interest payments combined with an overall restructuring of the debt will enable the Commission to defuse the financial and policy time-bomb of multiple defaults. Multiple defaults would destroy not only C Block participants, but would effectively poison the climate for *all* future auctions. Compounding these disastrous circumstances, the Commission would be required to hold a costly re-auction. Given the current market valuations of PCS spectrum, the Commission would likely receive only a fraction of the bid amounts in the second auction that it received in the first. For this reason, the failure to restructure the C Block PCS payments will result in a substantial reduction in the face value of the revenue that can be obtained from the C Block.

C. Failure to Restructure Will Further Delay Roll-Out to Consumers

The competing demands on licensees' capital resources alluded to throughout the foregoing discussion--*i.e.*, the need to build out rapidly and the need to honor repayment obligations--are inversely related: the more capital that must flow to repayment obligations, the less capital is available for job creation, infrastructure and service development. PCS companies cannot attain positive cash flows until they build-out their facilities, and cannot *sustain* positive cash flows until their operational services are sold to a significant number of subscribers. If the capital available to PCS companies flows to payment obligations for their licenses in the initial years, rather than to build-out, entrepreneurs' PCS facilities will not be built "rapidly," as mandated by § 309(j)(3) of the Act. In fact, they may never be built at all, because available capital resources will have been depleted long before a defaulting company can begin to offer services to the public.

Failure to restructure the PCS payments now will result in further delays in bringing new services to the public. Payments under the present schedule will either force a slow-down as needed funds are drained away from the build-out, or they will force multiple defaults across the industry. Multiple defaults would necessitate a reauction, which would *further delay* the PCS build-out. The amount of time required to recover the licenses from defaulting parties, to mount a re-auction, to re-distribute the new licenses and complete a new build-out phase could take well in excess of two years.

V. CONCLUSION

For the reasons stated herein, the Commission should restructure the Broadband PCS C Block debt as follows and as illustrated by the chart attached as Appendix A:

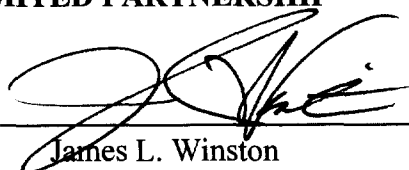
- Defer all payments without any accrual of interest for the first five years of the license term,
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- Require full payment of outstanding principal and interest at maturity.

Urban Comm submits this proposal not only as a viable solution to the financing problems faced by designated entities who obtained licenses in the C Block auction, but also as one that meets the Commission's public interest policies and preserves the funds promised to the U.S. Treasury.

Respectfully submitted,

**URBAN COMMUNICATORS PCS
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June 23, 1997

APPENDIX A

ILLUSTRATIVE EXAMPLE - EFFECT OF PROPOSED STRUCTURE ON NET PRESENT VALUE PER POP

ASSUMPTIONS:

C Block Average Price/POP \$ 39.17

C-Block POPs* 2,837

15% NPV Discount Rate

**Note: This number of POPs is used so that a \$100 million face FCC Debt amount can be equated to the average C Block price per POP of \$39.17*

PROPOSED STRUCTURE

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>	<u>Year 8</u>	<u>Year 9</u>	<u>Year 10</u>
Beginning Balance	100,000	100,000	100,000	100,000	100,000	100,000	100,000	90,000	80,000	70,000
Principal Repayment	0	0	0	0	0	0	10,000	10,000	10,000	70,000
Accrued Interest	0	0	0	0	0	0	0	0	0	0
Ending Balance	100,000	100,000	100,000	100,000	100,000	100,000	90,000	80,000	70,000	0
Average Balance	100,000	100,000	100,000	100,000	100,000	100,000	95,000	85,000	75,000	35,000
Cash or Accrued Interest	None	None	None	None	None	C	C	C	C	C
Assumed Effective Interest Rate	6.8%	6.8%	6.8%	6.8%	6.8%	6.8%	6.8%	6.8%	6.8%	6.8%
Cash Interest	0	0	0	0	0	6,800	6,460	5,780	5,100	2,380
Accrued Interest	0	0	0	0	0	0	0	0	0	0
Cash Interest Payments	0	0	0	0	0	6,800	6,460	5,780	5,100	2,380
Accrued Interest Payments	0	0	0	0	0	0	0	0	0	0
Principal Repayment	0	0	0	0	0	0	10,000	10,000	10,000	70,000
TOTAL	0	0	0	0	0	6,800	16,460	15,780	15,100	72,380

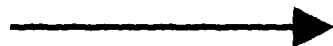
Face Amount of Debt/POP 100,000

Face Amount of Debt/POP \$ 35.25

Net Present Value of Debt 36,470

NPV of Debt Per POP \$ 12.86

Adjusted Value Per POP \$ 14.29



A & B Block Avg. Price/POP \$ 15.54

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P. hereby certify that on June 23, 1997, true copies of the foregoing Comments In the Matter of Broadband PCS C and F Block Installment Payment Issues were hand delivered to the following:

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Chairman
Federal Communications Commission
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Commissioner Rachelle Chong
Federal Communications Commission
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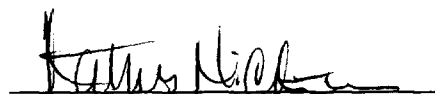
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